

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs March 25, 2009

STATE OF TENNESSEE v. ADAM B. BURNETTE

Appeal from the Circuit Court for Blount County
No. C-16744 Michael H. Meares, Judge

No. E2008-01900-CCA-R3-CD - Filed April 24, 2009

The defendant, Adam B. Burnette, appeals the revocation of his probation. The defendant concedes that he violated the terms of his probationary sentence but nevertheless claims that “[r]evocation in this case was too severe.” Discerning no error, we affirm.

Tenn. R. App. P. 3; Judgment of the Circuit Court Affirmed

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and D. KELLY THOMAS, JR., J., joined.

J. Liddell Kirk, Knoxville, Tennessee (on appeal), and Mack Garner, District Public Defender (at trial), for the appellant, Adam B. Burnette.

Robert E. Cooper, Jr., Attorney General and Reporter; Lacy Wilber, Assistant Attorney General; Mike Flynn, District Attorney General; and Ellen Berez, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

On June 22, 2007, the defendant entered a plea of guilty to one count of aggravated assault in exchange for a sentence of three years to be served as 120 days of incarceration followed by probation. On January 3, 2008, the defendant’s probation officer, Beverly Kerr, filed a probation violation report alleging that the defendant had violated the terms of his probation by failing to report, failing to provide proof of employment, failing to complete alcohol and drug assessment, failing to attend domestic violence classes, failing to advise Ms. Kerr of a change in residence, and failing to pay court costs or probation fees. A probation violation warrant issued that same day.

At the August 18, 2008 hearing on the violation warrant, Ms. Kerr testified that she began supervising the defendant on August 28, 2007, and that he had reported as directed until November 6, 2007. After the defendant failed to report following his November 6, 2007 appointment, Ms. Kerr conducted a “home visit” at the defendant’s reported residence on December 5, 2007. The defendant’s grandfather told Ms. Kerr that the defendant had moved. The defendant

did not advise Ms. Kerr of his change in residence or provide proof of employment as required by the terms of his probation. Ms. Kerr testified that in addition to his failure to report, the defendant had failed to pay either his probation fees or his court costs. He also failed to undergo alcohol and drug assessment or attend domestic violence classes, compliance with each of which was a condition of his probation. Ms. Kerr stated that she and the defendant “did exchange a couple of phone calls where [the defendant] made some excuses as to why he did not come in, but he continued to fail to report when he was rescheduled appointments.”

The defendant testified that when he was released from jail, he moved in with his grandfather and began performing construction work “with one of [his] churchgoers.” The defendant admitted that he failed to report following his November 6, 2007 appointment, but he blamed his failure to report on scheduling difficulties. He stated that because he did not have a driver’s license, he arranged transportation with his boss or his grandfather, which made it “hard for us to schedule something.” He said after he had missed several appointments, he “got kind of iffy about thinking [he] would be violated” and quit reporting. The defendant elaborated,

I know it sounds bad, but . . . it was the holidays – what I got put on probation for really completely took everything from me. I was . . . going to church, I had been saved. I changed my whole life around. . . . No drugs, no alcohol, still go to church, still . . . try to do everything I can do to stay ahead. But yeah, I mean, I just got to the point to where I was worried. I had the drug and alcohol assessment. I had it scheduled. I had . . . a conflict with the domestic violence classes because they could only see me on Wednesdays in the afternoon, which corresponded with my church. And at that time, I really needed to be in church. . . . [E]verything was just hard on me. And I was trying to do it the right way and not, you know, drive, not try to go back out and – you know, the people that I used to rely on were the people that I couldn’t be around anymore

The defendant testified that since he had stopped reporting, he had lived periodically with his brother and grandfather and had worked “[o]ff and on.” The defendant testified that he had been drug and alcohol free for more than a year and that he had completed the necessary paperwork to have his driver’s license reinstated. The defendant asked the trial court to reinstate his probation, claiming that he would be able to comply with the terms of probation with support from his “new foundation of friends.” He stated, “I know for a fact I can comply with anything that needs to be done.”

On cross-examination, the defendant admitted that he failed to report as directed, that he failed to provide written proof of his employment, that he failed to undergo a drug and alcohol assessment or attend domestic violence classes, and that he failed to pay probation fees and court costs. The defendant acknowledged that he had only been incarcerated for 18 days at the time of the hearing and that he had failed during the previous eight months to rectify any of the violations in the January 3, 2008 warrant.

At the conclusion of the hearing, the trial court revoked the defendant's probation finding that he had violated the terms of his probation by failing to maintain employment and provide proof of employment, by failing to report, by failing to provide notice of a change of address, by failing to undergo an alcohol and drug assessment, by failing to attend domestic violence classes, and by failing to pay probation fees and court costs. The trial court ordered the defendant to serve the original, three-year sentence in confinement.

In this appeal, the defendant concedes that he violated the terms of his probationary sentence but contends that the trial court should not have ordered service of the balance of his sentence in confinement. The State asserts that the trial court properly revoked probation and ordered service of the sentence. We agree with the State.

A trial court may revoke a sentence of probation upon a finding by a preponderance of the evidence that the defendant has violated the conditions of his release. T.C.A. § 40-35-311(e) (2006). A revocation will be upheld absent a showing that the trial court abused its discretion. *State v. Harkins*, 811 S.W.2d 79, 82 (Tenn. 1991). In order to establish that the trial court has abused its discretion, the defendant must show that there is no substantial evidence to support the determination that he violated his probation. *Id.* (citing *State v. Grear*, 568 S.W.2d 285, 286 (Tenn. 1978); *State v. Delp*, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980)). Relief will be granted only when “the trial court’s logic and reasoning was improper when viewed in light of the factual circumstances and relevant legal principles involved.” *State v. Shaffer*, 45 S.W.3d 553, 555 (Tenn. 2001) (quoting *State v. Moore*, 6 S.W.3d 235, 242 (Tenn. 1999)). Upon finding a violation, the trial court may “revoke the probation and suspension of sentence and cause the defendant to commence the execution of the judgment as originally entered.” T.C.A. § 40-35-311(e). Furthermore, when probation is revoked, “the original judgment so rendered by the trial judge shall be in full force and effect from the date of the revocation of the suspension.” *Id.* § 40-35-310. The trial judge retains the discretionary authority to order the defendant to serve the original sentence. See *State v. Duke*, 902 S.W.2d 424, 427 (Tenn. Crim. App. 1995).

In this case, the defendant violated the terms of his probation by failing to report, failing to undergo alcohol and drug assessment, failing to attend domestic violence classes, failing to maintain and substantiate employment, failing to advise his probation officer of a change of address, and failing to pay his court costs or probation fees. The defendant’s promise to “comply with anything that needs to be done,” does not alter the fact that the defendant failed to comply with the terms of his probation despite having nearly a year to do so. The trial court did not abuse its discretion by ordering that he serve his sentence in incarceration.

Accordingly, the judgment of the trial court is affirmed.

JAMES CURWOOD WITT, JR., JUDGE